

15-DAY RENOTICE TEXT OF PROPOSED REGULATIONS

In the following, bold double underline indicates additional text and bold ~~double strikethrough~~ indicates additional deleted text to the originally proposed text presented in the original single underline and strikethrough format.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Program and Parole

3000. Definitions.

Section 3000 is amended to add the definition below and merge it alphabetically with those that exist in the regulations.

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Medical Parolee means a person released from confinement pursuant to Penal Code section 3550.

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Note: Authority cited: Sections 2717.3, 3000.03, 5058 and 5058.3, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 646.9, 653m, 832.5, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3550, 4570, 5009, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Section 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; In re Bittaker, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; and Madrid v. Cate (U.S.D.C. N.D. Cal. C90-3094 TEH).

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 4. General Institution Regulations

Article 8. Medical and Dental Services

New section 3359.1 is adopted to read:

3359.1. Medical Parole General Policy.

(a) Pursuant to Penal Code section 3550, an inmate who is found to be permanently medically incapacitated, as defined in (a)(1) below, with a medical condition that renders him or her permanently unable to perform the activities of daily living and results in the inmate requiring 24-hour care, shall be

referred to the Board of Parole Hearings, within 30 working days of the Chief Medical Officer or Chief Medical Executive determination, if all of the following conditions exist:

(1) The inmate is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living and results in the inmate requiring 24-hour care. Activities of basic daily living are breathing, eating, bathing, dressing, transferring, elimination, arm use, or physical ambulation.

(2) The medical/physical limitations documented in subsection (a)(1) above did not exist at the time the inmate was sentenced to the current incarceration.

(3) The inmate is not serving a life sentence without the possibility of parole.

(4) The inmate is not sentenced to death.

(b) A request for an inmate to be considered for medical parole may be initiated by any of the following:

(1) The inmate's primary care physician.

(2) The inmate's immediate family member, as defined in section 3000.

~~(3) An individual with a designated power of attorney for the health care of the inmate.~~ **An attorney or other individual appropriately authorized to initiate such actions on behalf of the inmate.**

(4) The inmate.

(c) Requests from individuals described in subsection (b)(2)-(3 4) above shall not be considered if the inmate's primary care physician has previously reviewed an inmate's eligibility for medical parole within the last 90 days.

(d) The inmate shall be granted medical parole if the Board of Parole Hearings determines the conditions under which the inmate would be released would not reasonably pose a threat to public safety.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

New section 3359.2 is adopted to read:

3359.2. Medical Parole Processing.

(a) The inmate's primary care physician shall refer the inmate for medical parole to the Chief Medical Officer (CMO) or Chief Medical Executive (CME) of the institution where the inmate is housed, utilizing the CDCR Form 7478 (12/10), Medical Parole Form, which is incorporated by reference, along with any other documentation the inmate's primary care physician or designee considers useful in determining the inmate's eligibility for medical parole. The inmate's primary care physician or designee shall also ensure the CDCR Form 7385-MP (03/11), Medical Parole Authorization for Release of

Information, which is incorporated by reference, is completed and signed by the inmate or inmate's designee.

(b) The CMO or CME shall review the CDCR Form 7478 and any other documentation submitted by the inmate's primary care physician, and make a determination as to the inmate's eligibility for medical parole based on the inmate's medical case factors as described in subsections 3359.1(a)(1)-(2).

(1) If the CMO or CME does not concur with the primary care physician's recommendation, he or she shall note on the CDCR Form 7478 the reason for the denial, and will sign and return the CDCR Form 7478 to the primary care physician, within three working days. The CMO or CME, or designee, shall notify the inmate and/or the inmate's designee of the reason for denial in writing within 30 working days.

(2) If the CMO or CME concurs with the primary care physician's recommendation, he or she shall sign and forward the CDCR Form 7478 and any supporting documentation to the institution's Classification and Parole Representative (C&PR), within three working days.

(c) Upon receipt of the CDCR Form 7478, the C&PR shall review the inmate's Central File to determine the inmate's statutory eligibility for medical parole as described in subsections 3359.1(a)(3)-(4).

(1) If the inmate does not meet the statutory requirements, the C&PR shall note the reason for denial on the CDCR Form 7478 and shall sign and return the form to the CMO or CME within three working days. The CMO or CME, or designee, shall notify the inmate and/or the inmate's designee of the reason for denial in writing within 30 working days.

(2) If the inmate meets the statutory requirements, the C&PR shall complete and sign the CDCR Form 7478 and return the form to the CMO or CME, and attach the information outlined in subsections 3359.2 (d)(10)-(15), within three working days, and shall request that the inmate's caseworker prepare an evaluation report.

(d) The inmate's caseworker shall complete the evaluation report and submit it to the C&PR within five working days, including the following information and attachments:

(1) Inmate's name and CDC number.

(2) Current commitment offense, brief description of crime, and sentence.

(3) County of commitment and County of Last Legal Residence.

(4) Prior juvenile and adult criminal history (include all arrests and convictions).

(5) Active or potential holds, warrants, and detainers.

(6) Institutional adjustment including, rule violation reports, counseling chronos, pending disciplinary actions, gang/disruptive group information, placement score, current housing assignment,

work/education assignments, participation in self-help activities, and other information deemed pertinent to the inmate's case factors.

(7) Mental health and/or developmental disability status/information.

(8) California Static Risk Assessment (CSRA) Score, as described in section 3768.1, if available.

(9) Any victim(s)/victim(s) next of kin notifications.

(10) Abstract of Judgment for the inmate's current commitment offense.

(11) Probation Officer's Report for the inmate's current commitment offense.

(12) Legal Status Summary.

(13) Institutional Staff Recommendation Summary.

(14) Criminal Identification and Information Number issued by the California Department of Justice, Bureau of Identification.

(15) Most recent CDC Form 128-G (Rev. 10/89), Classification Chrono, with the inmate's full case factors.

(e) The C&PR shall review the evaluation report and attachments and forward the package to the Warden or Chief Deputy Warden, within three working days.

(f) The Warden or Chief Deputy Warden shall review, sign, and forward the original evaluation report and attachments to the Classification Services Unit, within three working days.

(g) Upon receipt of the original CDCR Form 7478 as noted in subsection 3359.2 (c)(2), and the information outlined in subsections 3359.2(d)(10)-(15), the CMO or CME shall forward the documents, along with the completed CDCR Form 7385-MP to the designated California Prison Health Care Services office, who shall identify suitable placement for the inmate, document the placement plan information on the CDCR Form 7478, and forward all the documents referenced in this subsection to the appropriate Division of Adult Parole Operations (DAPO) Re-entry Unit, within eight working days.

(h) DAPO Re-Entry Unit staff shall forward the CDCR Form 7478, CDCR Form 7385-MP, and attachments to the appropriate parole unit, where the assigned parole agent shall review the recommended placement plan. Within eight working days, the parole agent shall document his/her assessment of the placement plan on the CDCR Form 7478 and forward a copy to the designated California Prison Health Care Services staff, along with a copy of the CDCR Form 1515-MP (02/11), Conditions of Medical Parole, which is incorporated by reference, noting approval or disapproval of the proposed placement and any conditions of medical parole. The assigned parole agent shall also forward the original CDCR Form 7478, CDCR Form 7385-MP, and CDCR Form 1515-MP to the Classification Services Unit.

(1) If the identified placement plan is not approved, the parole agent shall document the reason for the disapproval on the CDCR 7478 and return the original form to the California Prison Health Care Services office, for consideration of an alternative placement.

(i) The Classification Services Unit shall review the CDCR Form 7478, CDCR Form 7385-MP, evaluation report, and CDCR Form 1515-MP, for completeness, and forward to the Board of Parole Hearings within three working days, after receiving the entire packet.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

New section 3359.3 is adopted to read:

3359.3. Pre-Release Process.

(a) Upon the Board of Parole Hearings' approval of medical parole, the Classification and Parole Representative (C&PR) shall be notified to ensure a medical parole packet is processed, and required Penal Code notifications are completed. The C&PR shall forward the packet to the parole unit that will supervise the medical parolee, within five working days.

(b) If the inmate is already housed in the community, the parole agent of record shall collaborate with the institution to complete parole release documents.

(c) The assigned parole agent shall contact the local law enforcement agency to notice the agency of any required Penal Code (PC) registration(s).

(d) The inmate's Central File shall be forwarded to the institution designated by the Director, Division of Adult Institutions, with oversight of the medical parolee.

(e) Release allowances, as defined in subsection 3075.2(d), will not be issued to inmates on medical parole until the inmate transitions to parole pursuant to PC Section 3000.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

New section 3359.4 is adopted to read:

3359.4. Classification, Case Records, and Life Prisoner Processes.

(a) While on medical parole, the offender's classification processes, pursuant to California Code of Regulations, Title 15, Division 3, shall be suspended.

(b) Inmates sentenced to an indeterminate prison term shall continue to have life parole consideration hearings. The institution designated by the Director, Division of Adult Institutions will be responsible for processes related to life prisoner parole consideration hearings.

(c) Case Records functions of inmates on medical parole shall be managed by an institution designated by the Director, Division of Adult Institutions.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

New section 3359.5 is adopted to read:

3359.5. Medical Parole Supervision.

(a) Pursuant to the provisions of section 3504, the assigned parole agent shall conduct a face to face contact with the inmate at the placement location and conduct an initial interview, if possible, to include the following:

(1) Digital photograph.

(2) CDCR Form 1650-MP (02/11), Medical Parole Initial Interview/Contact, which is incorporated by reference.

(b) Inmates released on medical parole shall have general and/or special conditions of medical parole documented on the CDCR Form 1515-MP (02/11), Conditions of Medical Parole. These conditions shall remain in effect from the date of release to medical parole until transition to parole pursuant to Penal Code section 3000.

(1) In the event the medical parolee does not comprehend, or is otherwise not capable of signing the CDCR Form 1515-MP, the conditions of medical parole will be imposed.

(2) In the event the inmate refuses to sign the conditions of medical parole, the case will be referred to the Board of Parole Hearings.

(3) Inmates released to medical parole, who are required to register pursuant to Penal Code section 290, are not required to submit to continuous electronic monitoring, pursuant to Penal Code section 3010, until the medical parolee commences serving the period of parole provided by, and under the provisions of, Penal Code section 3000. However, electronic monitoring may be added as a condition of medical parole, pursuant to Penal Code section 3550(h).

(4) When a special condition of medical parole is imposed by the Division of Adult Parole Operations and no longer applies to the medical parolee, a parole unit supervisor or higher-level staff person may remove or modify the special condition of medical parole.

(5) When a special condition of medical parole is imposed by the Board of Parole Hearings, only the Board of Parole Hearings may remove or modify the special condition of medical parole.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

New section 3359.6 is adopted to read:

3359.6. Removal from Medical Parole.

(a) The inmate's treating physician, any other physician selected by the Board of Parole Hearings (BPH), or the parole agent may make a recommendation to BPH to return a medical parolee to the custody of the Division of Adult Institutions (DAI) under the following circumstances:

(1) The inmate's treating physician or physician selected by BPH has conducted a medical examination of the medical parolee and has made a determination that his or her condition has improved to the extent that the medical parolee no longer qualifies for medical parole.

(2) The parole agent has made a determination that the medical parolee is a threat to himself or herself, another person, or to public safety, or there has been a significant change in his or her conditions of release.

(b) The parole agent shall contact the Director, Division of Adult Parole Operations, or designee, and request that the medical parolee be placed on suspended medical parole status, pending review by BPH to return the medical parolee to the custody of DAI or placement at an alternative location.

(c) The parole agent of record shall submit a CDCR Form 2219-MP (02/11) Medical Parole Status Change, which is incorporated by reference, to the Chief Deputy Commissioner, BPH, with a recommendation for removal from medical parole or placement at an alternative location.

Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.

~~New section 3359.7 is adopted to read:~~

~~3359.7. Non-Citizen Inmates.~~

~~An inmate who is not a citizen of the United States may be released to medical parole, provided he or she is released to federal immigration authorities pending deportation.~~

~~Note: Authority cited: Sections 5058 and 5058.3, Penal Code. Reference: Sections 3550 and 5054, Penal Code.~~